

**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL CASE NO. 1:16-cv-00237-MR-DLH**

RICHIE PETTY,

Plaintiff,

vs.

**BILLY BYERS, in his official and
individual capacity, RODNEY FITCH,
in his official and individual capacity,
ALAN NORMAN in his official
capacity as SHERIFF OF
CLEVELAND COUNTY, ASCENSION
INSURANCE AGENCY, INC., as
surety, and LIBERTY MUTUAL
INSURANCE COMPANY, as surety,**

Defendants.

ORDER

THIS MATTER is before the Court on the Defendants' Motion to Dismiss [Doc. 8] and the Magistrate Judge's Memorandum and Recommendation [Doc. 14] regarding the disposition of that motion.

Pursuant to 28 U.S.C. § 636(b) and the standing Orders of Designation of this Court, the Honorable Dennis L. Howell, United States Magistrate Judge, was designated to consider the Defendants' motion to dismiss and to submit a recommendation for its disposition.

On February 1, 2017, the Magistrate Judge filed a Memorandum and Recommendation in this case containing conclusions of law in support of a recommendation regarding the motion to dismiss. [Doc. 14]. The parties were advised that any objections to the Magistrate Judge's Memorandum and Recommendation were to be filed in writing within fourteen (14) days of service. The period within which to file objections has expired, and no written objections to the Memorandum and Recommendation have been filed.

After a careful review of the Magistrate Judge's Recommendation, the Court finds that the proposed conclusions of law are consistent with current case law. Accordingly, the Court hereby accepts the Magistrate Judge's recommendation that the motion to dismiss be granted in part and denied in part.

IT IS, THEREFORE, ORDERED that the Memorandum and Recommendation [Doc. 14] is **ACCEPTED**, and the Defendants' Motion to Dismiss [Doc. 8] is **GRANTED IN PART** and **DENIED IN PART**. Specifically, the Defendants' Motion to Dismiss [Doc. 8] is **GRANTED** as follows:

- (1) The Plaintiff's § 1983 claims against Sheriff Norman and the § 1983 claims against Defendants Byers and Fitch in their official capacities are hereby **DISMISSED WITHOUT PREJUDICE**;

(2) The Plaintiff's § 1983 claims for excessive force asserted against Defendant Fitch in his individual capacity are **DISMISSED**;

(3) The Plaintiff's claims against Defendant Ascension Insurance Agency, Inc. are **DISMISSED**; and

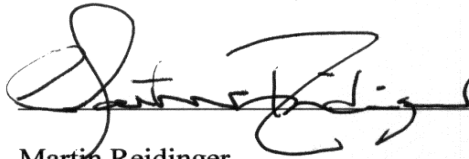
(4) The Plaintiff's claims arising under state law for assault and battery against Defendant Fitch are **DISMISSED**.

IT IS FURTHER ORDERED that in all other respects, the Defendants' Motion to Dismiss [Doc. 8] is **DENIED**.

IT IS FURTHER ORDERED that the Plaintiff shall have sixty (60) days from the entry of this Order to perfect service of process as to Defendant Byers.

IT IS SO ORDERED.

Signed: March 3, 2017


Martin Reidinger
United States District Judge

